

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF NEVADA

3 IVAN LEE MATTHEWS, II,

Case No. 2:21-cv-00120-APG-NJK

4 Plaintiff

**ORDER**

5 v.

6 SCALLEY, *et al.*,

7 Defendants

8 This action began with a *pro se* civil rights complaint filed under 42 U.S.C. § 1983 by  
9 plaintiff Ivan Lee Matthews, II, a state prisoner. On January 25, 2021, Magistrate Judge Koppe  
10 ordered Matthews to file a fully complete application to proceed *in forma pauperis* or pay the  
11 full filing fee of \$402 on or before March 26, 2021. ECF No. 3 at 2. On February 4, 2021,  
12 Matthews filed a second incomplete application to proceed *in forma pauperis*. ECF No. 4. The  
13 March 26, 2021 deadline has now expired, and Matthews has not filed a fully complete  
14 application to proceed *in forma pauperis* or paid the full \$402 filing fee.

15 District courts have the inherent power to control their dockets and “[i]n the exercise of  
16 that power, they may impose sanctions including, where appropriate . . . dismissal” of a case.  
17 *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may  
18 dismiss an action, with prejudice, based on a party’s failure to prosecute an action, failure to  
19 obey a court order, or failure to comply with local rules. *See Ghazali v. Moran*, 46 F.3d 52, 53-  
20 54 (9th Cir. 1995) (affirming dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*,  
21 963 F.2d 1258, 1260-61 (9th Cir. 1992) (affirming dismissal for failure to comply with an order  
22 requiring amendment of complaint); *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988)  
23 (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court

1 apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (affirming  
2 dismissal for failure to comply with court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424  
3 (9th Cir. 1986) (affirming dismissal for lack of prosecution and failure to comply with local  
4 rules).

5 In determining whether to dismiss an action for lack of prosecution, failure to obey a  
6 court order, or failure to comply with local rules, the court must consider several factors: (1) the  
7 public's interest in expeditious resolution of litigation; (2) the court's need to manage its docket;  
8 (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on  
9 their merits; and (5) the availability of less drastic alternatives. *See Thompson*, 782 F.2d at 831;  
10 *Henderson*, 779 F.2d at 1423-24; *Malone*, 833 F.2d at 130; *Ferdik*, 963 F.2d at 1260-61;  
11 *Ghazali*, 46 F.3d at 53.

12 Here, the first two factors (the public's interest in expeditiously resolving this litigation  
13 and the Court's interest in managing the docket) weigh in favor of dismissal. The third factor  
14 (risk of prejudice to the defendants) also weighs in favor of dismissal, since a presumption of  
15 injury arises from the occurrence of unreasonable delay in filing a pleading ordered by the court  
16 or prosecuting an action. *See Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The  
17 fourth factor (public policy favoring disposition of cases on their merits) is greatly outweighed  
18 by the factors in favor of dismissal discussed herein. Finally, a court's warning to a party that his  
19 failure to obey the court's order will result in dismissal satisfies the "consideration of  
20 alternatives" requirement. *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132-33; *Henderson*,  
21 779 F.2d at 1424. Judge Koppe's order expressly stated: "IT IS FURTHER ORDERED that, if  
22 Plaintiff does not file a fully complete application to proceed *in forma pauperis* with all three  
23 documents or pay the full \$402 filing fee for a civil action on or before March 26, 2021, this case

1 will be subject to dismissal without prejudice for Plaintiff to refile the case with the Court, under  
2 a new case number, when Plaintiff has all three documents needed to file a complete application  
3 to proceed *in forma pauperis* or pays the the full \$402 filing fee." Thus, Matthews had adequate  
4 warning that dismissal would result from his noncompliance with Judge Koppe's order.

5 I THEREFORE ORDER that this action is dismissed without prejudice based on plaintiff  
6 Ivan Lee Matthews, II's failure to file a fully complete application to proceed *in forma pauperis*  
7 or pay the full \$402 filing fee in compliance with the January 25, 2021 order.

8 I FURTHER ORDER that the pending motion (**ECF No. 4**) is **denied** as moot.

9 I FURTHER ORDER the Clerk of Court to close the case and enter judgment  
10 accordingly. No other documents may be filed in this now-closed case.

11 DATED: April 5, 2021.



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ANDREW P. GORDON  
UNITED STATES DISTRICT JUDGE